

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

MELINDA RUSCITTI, an individual,

Plaintiff,

v.

LEGACY HEALTH, a corporation,

Defendant.

Case No. 3:23-cv-00787-JR

**ORDER ADOPTING THE FINDINGS
AND RECOMMENDATION**

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Attorney for Plaintiff.

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Ninth Ave., Suite 3000, Portland, OR 97205. Attorneys for Defendant.

IMMERGUT, District Judge.

On September 27, 2023, Magistrate Judge Jolie A. Russo issued her Findings and Recommendation (“F&R”), ECF 9, recommending that Defendant Legacy Health’s Motion to Dismiss, ECF 4, be granted. Plaintiff Melinda Ruscitti timely filed objections, ECF 11, to which Defendant timely responded, ECF 12. This Court has reviewed de novo the portions of the F&R to which Plaintiff objected. This Court ADOPTS Judge Russo’s F&R.

LEGAL STANDARDS

Under the Federal Magistrates Act (“Act”), as amended, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). If a party objects to a magistrate judge’s F&R, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R that are not objected to. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act “does not preclude further review by the district judge, *sua sponte*” whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

CONCLUSION

This Court has carefully reviewed de novo the portions of Judge Russo’s F&R to which Plaintiff objected. Judge Russo’s F&R, ECF 9, is adopted in full.¹ This Court GRANTS Defendant’s Motion to Dismiss, ECF 4, and DISMISSES the complaint without prejudice. Plaintiff is granted leave to file an amended complaint within fourteen days of the issuance of this Order.

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¹ In its motion to dismiss, Defendant chose not to raise the affirmative defense of undue hardship, *see* ECF 4 at 6 n.3, so neither the F&R nor this Order addresses it. As this Court recently explained, a defendant’s ability to satisfy a showing of undue hardship at the dismissal stage will depend on the robustness of the record and the materials a court can properly consider; this Court does not find it to be impossible as a matter of law. *See Stephens v. Legacy Health*, No. 3:23-CV-00206-SB, 2023 WL 7623865 (D. Or. Nov. 14, 2023); *see also Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1179 (9th Cir. 2013) (explaining that in some circumstances extrinsic evidence and affirmative defenses may be considered properly on a motion to dismiss).

IT IS SO ORDERED.

DATED this 16th day of November, 2023.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge